



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,836	07/07/2004	Lourens George Bordewijk	2001-1343	8388

466 7590 05/30/2006

YOUNG & THOMPSON
745 SOUTH 23RD STREET
2ND FLOOR
ARLINGTON, VA 22202

EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
----------	--------------

2837

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

811

Office Action Summary	Application No. 10/500,836	Applicant(s) BORDEWIJK, LOURENS GEORGE	
	Examiner Jeremy Luks	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/7/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 12 is objected to because it recites the limitations "the end face" in Line 8, and "the ear" in Line 6. There is insufficient antecedent basis for these limitations in the claim. Appropriate correction is required.
2. Claim 14 is objected to because it recites the limitations "the first central axis" in Line 2, "the second central axis" in Line 3, and "said second side" in Line 4. There is insufficient antecedent basis for these limitations in the claim. Appropriate correction is required.
3. Claims 17 and 18 are objected to because they recite the limitation "the head end face" in Line 2. There is insufficient antecedent basis for this limitation in these claims. Appropriate correction is required.
4. Claim 22 is objected to because of the following informalities: The limitation refers to means for removing the device from a users ear, located on "said other side," which Applicant has declared as the side of the device that is inside of the users ear and therefor would make the device unusable as claimed. Further, there is no support in the Specification for a removal means located on the "other side". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 2837

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12, 13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juneau (6,228,020) in view of Levin (6,144,750).

With respect to Claims 12, 13 and 19, Juneau teaches a hearing aid to be placed in the auditory canal (Figure 1, #2), comprising a universal standard housing (Figure 14, #10) provided with a microphone (Figure 8, #25), an amplifier (Figure 9, #34), a loudspeaker (Figure 15, #36) and a battery compartment (26), said housing (Figure 14, #10) being provided on a side with sound transmission (Figure 15, #37) means adapted to the auditory canal of a user (Claim 1, Preamble) for the transmission of sound from said loudspeaker (36) into the auditory organ, the end face (Figure 8, #22) of said one side being provided in the center with the input of said microphone (25).

Juneau fails to teach the housing being provided on one side with means for removing said hearing aid from the ear. Levin teaches a part for removing said hearing aid from the ear (Figure 2, #38) on an outer side (Col. 2, Lines 42-44). Further, with respect to Claim 19, the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Juneau with the apparatus Levin to allow for easy removal of the in-ear device.

With respect to Claims 17 and 18, Juneau teaches the head end face (Figure 8, #22) is provided with switching means (27) and connector means (28) on said one side.

With respect to Claims 20 and 21, Levin teaches a symmetrically oval cross-section (Figure 2.) It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Juneau with the apparatus Levin to allow for easy fit and retention of the in-ear device within a user's ear.

With respect to Claim 22, Juneau teaches a contact surface denoted by the Examiner as #50 in Figure 15, located on an "other side" for means of manually removing the device from a user's ear.

6. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juneau (6,228,020) in view of Levin (6,144,750), as applied to Claim 12 above, and further in view of Haertl (4,716,985). Juneau and Levin are relied upon for the reasons and disclosures set forth above. Juneau and Levin fail to teach a first central axis through said one side, and a second central axis provided through a second side form an angle of at least 10° and approximately 45°. Haertl teaches a first central axis (Figure 3, #28) through said one side (27), and a second central axis (31) provided through a second side (30) form an angle of at least 10° and approximately 45°. The Examiner notes that angle measured at 140° by Haertl is supplementary to the angle claimed by Applicant and therefor renders the supplementary angle as measuring approximately 45°.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Juneau as modified, with the design of Haertl to provide easy fit and retention of the in-ear device within a user's ear, as well as comfort while being worn.

Conclusion

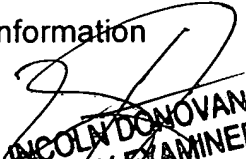
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent arts of record relating to hearing aids are disclosed in the PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks
Patent Examiner
Art Unit 2837


LINCOLN DONOVAN
PRIMARY EXAMINER
GROUP 2100